IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

MARIO RODOLFO,	§	
	§	
Plaintiff,	§	
	§	
	§	CIVIL ACTION NO. 3:17-cv-00418-M
v.	§	
	§	
	§	
CROWLEY ROAD PLAZA, LLC,	§	
Defendant.	§	
	§	

ORDER

Before the Court is Plaintiff's Motion to Vacate Judgment [ECF No. 19] and Plaintiff's Motion to Dismiss [ECF No. 20]. Plaintiff filed this suit on February 14, 2017, alleging violations of the Americans with Disabilities Act (the "ADA") and Texas state law, and requesting certification of a class. (Compl., ECF No. 1). According to the Complaint, Plaintiff is disabled and uses a wheelchair. (*Id.* ¶ 33). The Complaint alleges that Defendant owns and operates a small shopping center and parking lot located at 5721 Crowley Road, Fort Worth, Texas (the "Property"). (*Id.* ¶ 8).

On August 18, 2017, Plaintiff moved for default judgment against Defendant for violating the ADA by failing to remove the architectural barriers at the Property when removal is readily achievable. (Mot. Default J., ECF No. 10 at 2). Plaintiff asked the Court to dismiss without prejudice his class action claims, his remaining claims under the ADA, and his state law claims. (*Id.* at 7). On August 22, 2017, this Court entered default judgment against Defendant and dismissed Plaintiff's remaining claims. (Default J., ECF No. 12 at 1–2). The Court granted

Plaintiff's Motion for Attorney's Fees, ordering Defendant to pay Plaintiff \$6,415.00 in attorneys'

fees, costs, and expenses incurred by Plaintiff in this matter. (Order, ECF No. 16 at 5).

Plaintiff now moves to vacate the default judgment against Defendant and dismiss the case

without prejudice to refiling. Plaintiff asserts that after the Court entered its Order for Default

Judgment against Defendant, Defendant's counsel notified Plaintiff that there was an error in the

address of the Property. (Mot. Vacate Default J. at 1). According to Plaintiff, the correct address

of the Property is 5741 Crowley Road, not 5721 Crowley Road. (Id.). Plaintiff asks the Court to

dismiss the case so that the parties can "make an effort to resolve this matter outside litigation in

the interests of judicial economy and *Dondi*." (Mot. Dismiss at 1). If the parties cannot reach an

agreement, Plaintiff states that he will refile the case. (Id.).

After reviewing Plaintiff's motions, the Court is of the opinion that they should be

GRANTED. Therefore,

IT IS ORDERED that the Court's Order granting Plaintiff's Motion for Default Judgment

[ECF No. 11] and the Default Judgment entered against Defendant [ECF No. 12] are VACATED.

IT IS FURTHER ORDERED that the Court's Order granting Plaintiff's Motion for

Attorney's Fees [ECF No. 16], which is predicated on the Default Judgment entered against

Defendant, is **VACATED**.

IT IS FURTHER ORDERED that all of Plaintiff's claims in this action against Defendant

are **DISMISSED WITHOUT PREJUDICE**. The parties are to bear their own attorneys' fees

and costs incurred as a result of this action.

SO ORDERED.

February 23, 2018.

BARBARA M. G. LYNN

CHIEF JUDGE

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